

Slovenia

Law on Property Act

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Important Disclaimer

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(Extracts)

Real rights - Article 2

Real rights are:

- ownership
- lien
- land debt
- easement
- right of encumbrance
- right of superficies

Part VI - Lien

Chapter 1 – Common Provisions

Concept - Article 128

- (1) A lien is the right of a lienor in the event of the non-payment of a secured claim upon maturity to receive payment together with interest and costs from the value of the pledged property ahead of all other creditors of the pledger.
- (2) The pledger may establish a lien for insurance of his own debt or the debt of another.
- (3) The subject of a lien can be things, rights and securities provided they can be disposed of and have a pecuniary value.

Lien for future and conditional claims - Article 129

A lien may also be established for insurance of future and conditional claims.

Creation of a lien - Article 130

A lien can be created on the basis of a legal transaction, a law or a court decision.

Creation of a lien on the basis of a legal transaction - Article 131

The acquisition of a lien requires a valid legal transaction from which the obligation to establish a lien derives and the fulfilment of the other conditions laid down by this Act.

Nullity of contractual provisions - Article 132

- (1) Contractual provisions stipulating that ownership of pledged property transfers to the lienor if his claim is not paid at maturity and on the sale of the pledged property at a predetermined price are null and void, unless otherwise provided by this Act.
- (2) An agreement on the transfer of ownership and sale at a fixed price are valid if they are concluded after the secured claim has matured.

Right of disposal - Article 133

For the acquisition of a lien on the basis of a legal transaction the pledger must have the right to dispose of the pledged property.

Creation of a statutory lien - Article 134

A statutory lien is created at the moment when all the conditions laid down in law for the creation of a lien are met.

Creation of a lien on the basis of a court decision - Article 135

A lien on the basis of a court decision is created when the decision becomes final, unless otherwise provided by law.

Multiple pledging - Article 136

If an object is pledged to two or more lienors the order in which they are repaid in full is determined by the time when the lien was created.

Extinguishment - Article 137

- (1) If a secured claim extinguishes the lien also extinguishes, unless otherwise determined by law.
- (2) A lien also extinguishes upon the extinguishment of the object of the pledge. If a new pledgeable object takes the place of the original object of the pledge the lienor acquires the same type of lien on the new object.

Chapter 2 - Lien on Immovables (Mortgage)

Concept - Article 138

A mortgage is a lien on an immovable.

Mortgage on an immovable owned by two or more persons - Article 139

- (1) Each co-owner may establish a mortgage on their ideal share without the consent of the other co-owners.
- (2) The contractual establishment of a mortgage on an entire immovable which is the object of the co-ownership requires the agreement of all the co-owners.
- (3) If an immovable is jointly owned a mortgage can only be established on the immovable as a whole.

Extent of a mortgage - Article 140

- (1) A mortgage encompasses the immovable as a whole as well as all its elements and fruits until such time as they are severed from the principal thing.
- (2) A mortgage also encompasses the accessories owned by the pledger.

Creation of a mortgage on the basis of a legal transaction - Article 141

- (1) The acquisition of a mortgage on the basis of a legal transaction requires an entry in the land register.
- (2) The entry in the land register shall be made on the basis of a document containing the land register permission.
- (3) The document referred to in the previous paragraph must contain a designation of the mortgagee and the debtor of the secured claim and the pledger, if the pledger is not at the same time the debtor of the secured claim, the legal basis, the land register designation of the immovable on which the mortgage is established and the amount and due date of the secured claim.

Creation of a mortgage on the basis of a directly executable notarial protocol - Article 142

- (1) A legal transaction on the establishment of a mortgage may be concluded in the form of a directly executable notarial protocol in which the pledger agrees to secure the claim with the registration of a mortgage on the pledger's immovable and agrees that after the claim has fallen due the claim can be repaid from the proceeds obtained through the sale of the immovable and that the immovable shall be vacated and handed over within one month of the sale.
- (2) The direct executability of the notarial protocol shall be noted in the land register and shall also take effect against any subsequent acquirer of ownership of the pledged immovable.
- (3) The registration of the mortgage and the noting of the executability must be proposed by the notary immediately after the concluding of the transaction.

Creation of a mortgage on the basis of a court decision - Article 143

A mortgage is created on the basis of a court decision with its entry in the court register.

Statutory mortgage - Article 144

A statutory mortgage is created at the moment when all the conditions prescribed by law are fulfilled.

Joint mortgage - Article 145

- (1) A mortgage can be established on more than one immovable as security for the same claim.
- (2) In this case the mortgagee may demand repayment of his claim from the sale of the immovable of each of the pledgers, and may do so in any order.

Maximum mortgage - Article 146

- (1) A mortgage can also be established by determining a maximum amount up to which an immovable is used to guarantee a secured claim (maximum mortgage).
- (2) A maximum mortgage may secure an individual claim or claims originating in a specific legal relationship whose amount at the moment the mortgage is established is not determined.
- (3) With a maximum mortgage all the interest and costs of the secured claim are also secured up to the maximum amount.
- (4) In the case of the assignment of a claim secured with a maximum mortgage the transfer of the mortgage is excluded.

More than one mortgage on the same property - Article 147

- (1) More than one mortgage may be established on the same immovable.
- (2) An agreement whereby the pledger undertakes not to establish any further mortgages on the immovable is null and void.
- (3) Only after the first creditor is repaid in full is the next creditor paid, and so on in order.
- (4) If by agreement a creditor is repaid then the next creditors move up one place.

Transfer of a mortgage - Article 148

- (1) With the transfer of a secured claim the mortgage is also transferred, unless agreed otherwise.
- (2) The transfer of a mortgage shall take effect only upon its entry in the land register.

Supermortgage - Article 149

- (1) A supermortgage is a lien on a claim secured with a mortgage.
- (2) The mortgagee may establish a supermortgage for the benefit of a third person without the consent of the pledger.
- (3) The provisions regulating a lien on a claim shall also apply to a supermortgage.

Indivisibility of a mortgage - Article 150

- (1) A mortgage is intended to secure a claim until its final repayment. If a claim is partly repaid the mortgage is not reduced.
- (2) On the division of an immovable encumbered with a mortgage each of the parts of the immovable is encumbered with the mortgage in full.
- (3) If a mortgage is established on a whole thing in co-ownership each co-owner may pay the whole debt. Upon payment the co-owner acquires the secured claim together with the mortgage.

Sale of an immovable secured with a mortgage before a claim matures - Article 151

If by his actions the pledger reduces the value of a mortgaged immovable or in some other way worsens its state, the mortgagee may ask the court to instruct the mortgagor to cease such actions; if the mortgagor fails to do this he may request a compulsory collection of the claim secured with the mortgage even before the claim falls due.

Prohibition against antichresis - Article 152

An agreement by which a mortgagee secures the right to collect the fruits of an immovable or to exploit the immovable in some other way is null and void.

Repayment from a mortgage - Article 153

- (1) If the debtor fails to pay a claim within the deadline the creditor may demand in a suit that the pledged immovable be sold.
- (2) If the mortgage was created on the basis of a directly executable notarial protocol the creditor may demand that the notary establish that the claim has matured and sell the pledged immovable and repay the creditors or propose execution.
- (3) With regard to the statutory or contractual deadlines the buyer of an immovable may cancel a contract on the use of the immovable (in particular a tenancy or lease contract) in writing which was made after the establishment of the mortgage, giving a notice period of one month.

Extinguishment of a mortgage - Article 154

- (1) A mortgage extinguishes by deletion from the land register in which it is entered.
- (2) The deletion of a mortgage may be demanded:
 - if the debtor pays off the claim which is secured with it;
 - if the claim secured with the mortgage expires;
 - if the mortgagee renounces the mortgage;
 - if the same person becomes the owner of the immovable and the holder of the mortgage on this immovable;
 - if the mortgage expires by lapse of time;

- if the pledged property is sold for repayment of the secured claim.
- (3) A mortgage expires ten years from the day on which the secured claim fell due.
- (4) If under any title whatsoever an owner of an immovable encumbered with a mortgage receives some other immovable in compensation the mortgage shall transfer to this immovable.

Chapter 3 – Lien on Movable (Pignus)

Creation - Article 155

- (1) A lien on a movable is created on the basis of a valid contract of pledge when a pledger delivers the pledged movable into the direct possession of the lienor.
- (2) A lien is also created if the pledged movable is delivered into the direct possession of a third person such that only the lienor can demand its delivery.

Good faith of the lienor - Article 156

- (1) A lienor in good faith acquires a lien even if the pledger did not have the right to dispose of the movable if the pledger has the movable in his possession by will of its owner.
- (2) A lienor who in good faith as to the non-existence of other liens acquires a lien with the highest ranking if the lienor has the movable in his possession.

Safekeeping of pledged property - Article 157

A lienor must store pledged property with the diligence of a good businessman or a good manager. The secured claim shall be increased by the amount of the necessary costs incurred by the lienor in connection with the pledged property.

Use of pledged property - Article 158

- (1) A lienor does not have the right to use the pledged property or to deliver it to another person for use or in pledge (secondary pledge) unless the pledger allows him to do so.
- (2) A lienor who uses pledged property without the pledger's permission or delivers it to another person for use or in pledge shall be liable also for fortuitous destruction or damage to the property thereby caused.
- (3) The limitation period for a pledger's claim against a lienor for reimbursement for damage as a result of the impairment of the property expires one year from the day on which the property was returned.

Fruits of pledged property - Article 159

- (1) Ownership of the fruits of pledged property that are severed from the principal thing while a lien is in force is acquired by the pledger unless otherwise provided in the contract of pledge.
- (2) If the lienor acquires ownership of the fruits the value of the secured claim is reduced by the value of the fruits. The value of the fruits is first deducted from the reimbursement of costs to which the lienor has a right and then from the debt interest and finally from the principal.
- (3) The benefits under first and second paragraphs of this article shall also be deemed to be benefits achieved through the use of the pledged property.

Deprivation of pledged property from the lienor - Article 160

At the request of the pledger the court shall order the pledged property to be taken from the lienor and delivered to a third person to have in his possession and for his account if the lienor fails to store the pledged movable property as he should, if without the pledger's permission he uses it or gives it to another person to use, or if he uses it contrary to permission, and generally if he acts with it contrary to a contract or a law.

Defect in pledged property - Article 161

If it transpires that a pledged movable has a factual or legal defect which the lienor did not know about at the time when the contract of pledge was concluded, or if it was agreed that a defect would be remedied by the time the thing was delivered into possession, and as a result of the defect the pledged property did not provide sufficient security for repayment of the secured claim, the lienor has the right to demand from the pledger some other appropriate security.

Premature sale of pledged property - Article 162

- (1) If pledged property is spoiled or if it loses its value in some other way and there is a risk of it becoming insufficient to secure the creditor's claim, the court may, upon a request from the lienor or the pledger and after hearing the other party, order the property to be sold and determine the conditions of the sale. The sale shall be carried out by public auction or at an exchange price or market price if there is one. The proceeds of the sale, after deduction of the costs of the procedure and of the sale, are paid to the lienor on account of the secured claim, taking into account the interest at the bank discount rate in the place of fulfilment of the secured claim from the day of payment until the day on which the secured claim falls due.
- (2) The court shall refuse a request from the lienor if the pledger offers to provide other suitable security for the lienor in place of the pledged property.

Rights of the pledger - Article 163

- (1) At the request of the pledger the court may permit the pledged property to be sold to a specific person at a set price if it recognises that the price is reasonable and if the justified interests of the lienor are thereby protected. The proceeds of the sale, after deduction of the costs of the procedure and of the sale, are paid to the lienor on account of the secured claim, taking into account the interest at the bank discount rate in the place of fulfilment of the secured claim from the day of payment until the day on which the secured claim falls due.
- (2) A pledger who needs the pledged property for his own requirements may request that the court order the lienor to return it if the lienor provides other appropriate security.

Protection of a lien - Article 164

For the duration of a lien the lienor has the same legal protection as an owner and may under the same conditions demand the return of the pledged property, the cessation of disturbance and protection of possession.

Return of pledged property - Article 165

As soon as the secured claim is paid off in full the lienor must return the pledged property to the pledger or enable the pledger to take direct possession of it from a third person.

Court sale of pledged property - Article 166

If a secured claim is not settled at maturity the lienor may ask the court to issue a decision ordering the pledged property to be sold and the payment to be made. The regulations governing execution with the sale of movable property shall apply *mutatis mutandis* to this sale.

Out-of-court sale of pledged property - Article 167

- (1) The lienor and the pledger may agree in a contract of pledge that the pledged property can be sold out of court. An agreement on an out-of-court sale must be concluded in writing. In the case of contracts of pledge which under the provisions of obligation law are considered to be business contracts the existence of an agreement on an out-of-court sale is presumed.
- (2) If the secured claim is not settled at maturity the lienor may sell the pledged property at a public auction or at an exchange price or a market price if there is one. The sale may be carried out as from eight days after the day on which the lienor notified the debtor of the secured claim, as well as the pledger if it is not the same person, of his intention to do so. The lienor must inform both in good time of the date and place of the sale. The lienor receives payment of his entire claim from the proceeds of the sale, together with interest and costs, and must deliver any surplus to the pledger.
- (3) Any provisions of a contract of pledge providing for a different method of out-of-court sale to that set out in the previous paragraph shall be null and void.

Extinguishment of a lien - Article 168

A lien extinguishes if the lienor voluntarily returns the pledged property into the possession of the pledger.

Pledge to more than one lienor - Article 169

- (1) A pledger may pledge the same movable property to more than one lienor. The second and subsequent lienors acquire a lien at the moment when the pledger notifies this to the lienor who has direct possession of the thing or for whom a third person has direct possession of the thing.
- (2) If the secured claim of a lienor who has possession of a thing is paid in full he must deliver the pledged property to the next lienor. The repaid lienor has a lien for the costs of storage from the time when the secured claim was paid until the return of the property. It shall be considered that this lien is created on the same day as the lien which extinguished as a result of the payment of the secured claim.

Chapter 4 - Non-Possessory Lien on Movables

Concept - Article 170

A non-possessory lien is a lien on a movable where the pledged property is not delivered into the direct possession of the lienor nor is it delivered into the direct possession of a third person on behalf of the lienor but remains in the possession of the pledger or a third person on his behalf.

Creation of a non-possessory lien - Article 171

- (1) A non-possessory lien is created with an agreement in the form of a directly executable notarial protocol.
- (2) The agreement referred to in the previous paragraph must contain a designation of the lienor and the debtor of the secured claim and the pledger if he is not also the debtor of the secured claim, the details referred to in the second paragraph of Article 177, the legal basis, a description of the pledged property, the prescribed uniform identification symbol for the property, the amount and maturity of the secured claim or details from which the amount and maturity can be suitably determined, and the consent of the pledger to the establishment of the lien on the movable property and to the repayment of the secured claim upon its maturity from the pledged property.
- (3) The concluding of an agreement as referred to in the first paragraph of this article shall have the effect of an attachment of movable property in an execution procedure.
- (4) In cases where the object of the lien is movable property for which a register as referred to in Article 177 of this Act is kept, the lien is created with the entry of the lien in this register, which is done by the competent body at the request of a notary on the basis of the notarial protocol.

Use of pledged property - Article 172

The pledger may use the pledged property in accordance with its economic purpose or in accordance with an agreement with the lienor and does not have the right to alienate it or encumber it without the consent of the lienor.

Non-possessory lien on inventories - Article 173

- (1) Inventories in a precisely determined place can also be subject to a non-possessory lien.
- (2) The pledger is obliged to ensure the renewal of inventories in the normal manner and must enable the lienor to have regular supervision of the renewal of inventories and send to the lienor extracts on this from its books unless otherwise agreed by the parties.

Devastation of pledged property - Article 174

- (1) If through his actions or inaction the pledger reduces the value of pledged property or in some other way worsens its condition the lienor may demand that the property be delivered into his direct possession or that of a third person on his behalf.
- (2) With the delivery of the pledged property into the direct possession of the lienor or a third person a lien is acquired on the movable (*pignus*), whereby an agreement on an out-of-court sale is presumed to exist.

Payment under a non-possessory lien - Article 175

- (1) If the debtor fails to settle the secured claim at maturity the pledger must deliver the pledged movable into the direct possession of the lienor.
- (2) With the delivery of the pledged movable into the direct possession of the lienor a lien is acquired on the movable (*pignus*), whereby an agreement on an out-of-court sale is presumed to exist.
- (3) If the pledger fails to deliver the pledged movable to the lienor the lienor may propose execution for the delivery of the property or execution by means of a sale.

Multiple pledging of the same movable - Article 176

- (1) Under the conditions laid down in Article 172 movables may be placed in non-possessory pledge more than once. The pledger must inform all the previous lienors of each subsequent non-possessory pledge.
- (2) If a movable is placed in non-possessory pledge to more than one lienor the payment is made upon the maturity of the first secured claim through one of them or a third person (person authorised for sale) who they appoint by agreement. If an agreement among the lienors is not possible a person is appointed at the proposal of any of the lienors by the court in a non-litigious civil procedure.

- (3) The pledger must deliver the pledged movable to the person authorised for sale, who shall carry out the sale in accordance with Article 167 of this Act. After deduction of the costs of the sale the authorised person shall divide the proceeds among the lienors, taking into account the order in which the non-possessory liens were acquired and the due dates of the secured claims, whereby the payment of a claim not yet due shall take account of the interest at the bank discount rate in the place of fulfilment of the secured claim from the day of payment until the day on which the secured claim falls due.

Register of non-possessory liens - Article 177

- (1) If a uniform identification of the movable property is possible a register of non-possessory liens may be set up with a special regulation. In this case the provisions of this Act on mortgages shall apply *mutatis mutandis* to a non-possessory lien.
- (2) In addition to the identification of the movable property and the lien, details of the pledge and details of the creditor, debtor and pledger, if the pledger is not the same person as the debtor (personal name, residence, date of birth and personal identity number of a natural person or the name, head office address, registration number and tax number of a legal person) shall also be entered in the register referred to in the previous paragraph. The body responsible for keeping this register shall, *ex officio*, send the details of the pledge to bodies keeping the official records in which the movable property is entered in order for them to enter the details in these records and in the documents proving ownership of the movable property.
- (3) The details in the register of non-possessory liens are public. The body responsible for keeping this register may also obtain the details referred to in the previous paragraph from official databases maintained by so authorised bodies and organisations in the Republic of Slovenia.
- (4) If the movable property is entered in the register of non-possessory liens no one may rely on the argument that he was unaware of the details of a lien entered in this register. Anyone who relies on these details and who acts conscientiously in legal transactions shall not suffer detrimental legal consequences as a result.
- (5) The Government of the Republic of Slovenia shall determine by order the types of movable property for which a register as referred to in the first paragraph of this article shall be established, the type of uniform identification symbol for the moveable property, the procedure for and content of entries in the official records and documents, the method of maintaining, linking and seeking data in the register and the tariff for entries in the register.

Chapter 5 - Lien on Rights

Section 1 – Lien on a Claim

Concept - Article 178

For the purpose of securing a claim a lien may be established on another claim the object of which is a charge (pledged claim).

Notification of the debtor and delivery of a document - Article 179

- (1) A lien on a claim is created at the moment when the debtor of the pledged claim receives notification from the pledger that the claim is pledged.
- (2) The pledger must deliver to the lienor a document and other proof of the pledged claim.

Prohibition against fulfilment to the pledger - Article 180

After receiving the notification of the pledge the debtor of the pledged claim may only make valid fulfilment to the lienor.

Duty to preserve a claim - Article 181

The lienor is obliged to take all necessary steps to preserve the pledged claim.

Collection and accounting of interest - Article 182

- (1) If a pledged claim confers a right to interest or to some other periodic claim it must be collected by the lienor.
- (2) The sums thereby obtained are set off against the costs to which the lienor has a right, the interest owed to him and finally the principal.

Extinguishment of a secured claim - Article 183

If a secured claim extinguishes the lienor must notify the debtor of the secured claim that his lien has extinguished. After receiving this notification the debtor of the secured claim may only make valid fulfilment to the pledger.

Collection of a pledged claim - Article 184

- (1) When a pledged claim falls due for payment the lienor must collect it.
- (2) If the object of the pledged claim is the delivery of a thing, with the fulfilment of the pledged claim to the lienor a lien is created on the thing with which the claim was fulfilled.
- (3) If the object of the pledged claim is money the lienor must, at the request of the pledger, deposit the amount collected with the court.

Payment if the object of both claims is money - Article 185

- (1) If the object of the pledged and secured claims is money the lienor may retain as much as is owed to him and must deliver the remainder to the pledger.
- (2) If when the pledged claim matures the secured claim has not yet fallen due for payment the lienor must reduce the secured claim by the interest payable at the bank

discount rate in the place of fulfilment of the secured claim from the day of payment of the pledged claim until the day on which the secured claim falls due.

Objections by the debtor of a pledged claim - Article 186

The debtor of a pledged claim may make the same objections against the lienor as the debtor of an assigned claim may make against the recipient in the case of the assignment of a claim.

Section 2 - Lien on a Security

Subject - Article 187

A lien may also be established on a security.

Creation of a lien - Article 188

- (1) If a pledged security is issued to the bearer a lien is created when the security is delivered to the lienor.
- (2) If a pledged security is issued by order or if a pledged security is registered to a name but in accordance with the law can be transferred by endorsement, a lien is created with an endorsement in which it is stated that the security is delivered in pledge (endorsement in pledge) and with the delivery of the security.
- (3) If a pledged security is registered to a name a lien is created at the moment when the debtor under the security receives notification from the pledger that the claim arising from the security is pledged.
- (4) The creation of a lien on a security which in accordance with the law is issued in non-materialised form is regulated by the law which sets out the method and conditions for the issuing of a security in non-materialised form.

Application of the provisions on the pledging of a claim - Article 189

The provisions of this Act regulating a lien on a claim shall apply *mutatis mutandis* to the pledging of a security.

Section 3 – Lien on Other Property Rights

Method of pledging - Article 190

A lien on another property right is created according to the method that applies to the transfer of this right, unless some other provisions are prescribed for a particular right.

Application of the provisions on the pledging of movable property - Article 191

The provisions on the pledging of movable property shall also apply to the pledging of other property rights, unless some other provisions are prescribed for them.

Part VII – Land Debt

Concept - Article 192

- (1) A land debt is the right to demand repayment of a specified cash sum from the value of an immovable ahead of other creditors with an inferior ranking.
- (2) The payment of a land debt must not be bound by a condition.

Application of the provisions on mortgages - Article 193

The provisions on mortgages shall apply *mutatis mutandis* to a land debt unless otherwise provided in this part.

Creation of a land debt - Article 194

- (1) A land debt is created on the basis of a unilateral legal transaction, with an entry in the land register and the issuing of a land letter.
- (2) A land debt can be established by the owner of the immovable.
- (3) A land debt can also be established by a mortgagee who, in agreement with the owner of the encumbered immovable, changes his mortgage into one or more land debts. The encumbrance of an immovable under land debts must not exceed the encumbrance under the mortgage. The change does not require the consent of other holders of the land debt or mortgage having the same or subsequent ranking.

Legal transaction - Article 195

- (1) A unilateral legal transaction on the establishment of a land debt must be done in the form of a notarial protocol.
- (2) The notarial protocol referred to in the previous paragraph must contain the name of the founder, the land register designation of the encumbered immovable and the amount and conditions attaching to the maturity of the sum.

Issuing of a land letter - Article 196

- (1) A land letter is issued to the founder by the court that keeps the land register for the encumbered immovable after the land debt has been entered in the register.
- (2) A land letter is a negotiable instrument to order which must contain the name of the court which issued it, all the details referred to in the second paragraph of Article 195 of this Act, the time of issue and the stamp of the court. The founder is deemed to be the first holder of the land letter.

Transfer of the land debt - Article 197

A land debt is transferred together with the land letter.

Pledging of a land debt - Article 198

A land debt is independently pledgeable.

Payment of a land debt - Article 199

- (1) The owner of an encumbered immovable must pay the land debt on maturity to the entitled holder of the land letter.
- (2) A land letter is an executable title.
- (3) The owner of an encumbered immovable cannot demand payment of the land debt.

Extinguishment of a land debt - Article 200

- (1) A land debt extinguishes with its deletion from the land register.
- (2) A land debt can only be deleted from the land register upon submission of the land letter.

Part VIII – Transfer as Security

Chapter 1 - Transfer of Title as Security

Concept - Article 201

- (1) Transfer of title as security (fiduciary transfer) is a form of security of a claim where movable property remains in the direct possession of the transferor or a third person on his behalf.
- (2) It is deemed that the acquirer (fiduciary) acquired title under the resolutive condition of payment of the secured claim. Where agreed otherwise, an agreement as referred to in Article 202 of this Act shall be valid even if it does not contain the amount and maturity of the secured claim.
- (3) The provisions on the transfer of title shall apply *mutatis mutandis* to a fiduciary transfer.

Agreement between parties on the transfer of title as security - Article 202

- (1) An agreement between parties on the transfer of title as security must be concluded in the form of a directly executable notarial protocol.
- (2) An agreement referred to in the previous paragraph must contain a designation of the fiduciary and the transferor as well as the debtor of the secured claim if the debtor is not the transferor, the legal basis, a description of the movable property and the amount and maturity of the secured claim.

Rights and obligations of the parties - Article 203

- (1) An agreement as referred to in the first paragraph of Article 202 may also regulate the mutual rights and obligations of the parties.
- (2) For the duration of the relationship the provisions on a non-possessory pledge of movable property shall apply *mutatis mutandis* in respect of the rights and obligations of the parties unless otherwise provided in an agreement as referred to in the first paragraph of this article.

Repayment of the fiduciary – Article 204

- (1) If a secured claim is not paid at maturity the transferor must deliver the movable property into the direct possession of the fiduciary.
- (2) For a suitable price the fiduciary may retain the movable property or sell it in the manner provided for in the agreement referred to in Article 202 of this Act. If the agreement does not determine the manner of the sale then the provisions on a non-possessory pledge of movable property shall apply *mutatis mutandis*. The fiduciary must deliver any excess to the transferor.

Insolvency of the fiduciary - Article 205

The transferor may argue inadmissibility of execution against the fiduciary's creditors and exercise a right of exclusion in bankruptcy and composition on the fiduciarily transferred movable property.

Insolvency of the transferor - Article 206

- (1) The fiduciary may argue inadmissibility of execution against the transferor's creditors on the fiduciarily transferred movable property.
- (2) In the event of the bankruptcy or composition of the transferor the fiduciary has a separation right in respect of the fiduciarily transferred movable property.

Chapter 2 – Assignment of a Claim as Security

Concept - Article 207

- (1) The assignment of a claim as security (fiduciary assignment) is a form of security of a claim where the assignor assigns a claim to an assignee. Unless agreed otherwise, it shall be deemed that the acquirer acquired the claim under the resolutive condition of payment of the secured claim.
- (2) The provisions on the assignment of a claim shall apply *mutatis mutandis* to a fiduciary assignment.
- (3) If the same claim has been assigned as security more than once the claim shall be acquired by the person to whom it was first assigned.

Repayment of the assignee - Article 208

If the secured claim is not paid at maturity the assignee may be repaid from the assigned claim. He must hand over any excess to the assignor.

Insolvency of the assignee and the assignor - Article 209

- (1) The provisions of Article 205 of this Act shall apply *mutatis mutandis* in the event of the insolvency of the assignee.
- (2) In the event of the insolvency of the assignor the provisions of Article 206 of this Act shall apply *mutatis mutandis* only if an agreement on the assignment of the claim as security is concluded in the form of a notarial protocol.

Part X - Encumbrance

Concept - Article 249

An encumbrance is a right on the basis of which the owner of an encumbered immovable is bound to a future charge or service.

Creation - Article 250

- (1) An encumbrance is created on the basis of a legal transaction or a law.
- (2) An encumbrance may be established for the benefit of a specific person or for the benefit of the owner of a specific immovable.

Creation of an encumbrance on the basis of a legal transaction - Article 251

In addition to a valid legal transaction from which the obligation to establish an encumbrance derives, the creation of an encumbrance also requires the land register permission and an entry in the land register.

Creation of an encumbrance by law - Article 252

An encumbrance is created by law at the moment when the conditions determined by the law are fulfilled.

Extent of a guarantee - Article 253

The owner of an encumbered immovable is liable to the extent of the immovable for all the obligations arising from the encumbrance.

Division of an immovable - Article 254

- (1) If an immovable encumbered with an encumbrance is divided each owner shall be liable as a joint and several debtor.

- (2) If an immovable whose owner is the holder of the encumbrance is divided the encumbrance shall remain for the benefit of each individual part of the immovable.

Application of provisions - Article 255

The provisions of this Act on easements shall apply *mutatis mutandis* to an encumbrance. However, the provisions applying to mortgages shall apply *mutatis mutandis* to individual fulfilments.

Pledging of a building - Article 264

- (1) A building which is built on an immovable encumbered with a right of superficies may be pledged.
- (2) Upon the extinguishment of the right of superficies the lienor acquires a lien on the claim of the holder of the right of superficies for payment of compensation.

Part XII - Transitional and Final Provisions

Existence of rights - Article 266

- (1) Real rights acquired before this Act entered into force shall remain valid with the content laid down in this Act.
- (2) Liens acquired before this Act entered into force shall remain valid with the content with which they were established.

Cessation of use of the provisions of other laws - Article 274

- (1) With the entry into force of this Act the Basic Property Relations Act (Uradni list SFRJ, nos. 6/1980, 20/1980 and 36/1990) shall cease to be applied.
- (2) With the entry into force of this Act the provisions of chapter 23 (Articles 249 to 255) of the Execution and Protection of Claims Act (Uradni list RS, no. 51/98) on the creation of a lien shall cease to be applied, except for the provisions on immovables not yet entered in the land register, which shall be applied until their entry in the land register.
- (3) With a proposal for entry of an immovable in the land register the owner must also propose the entry of a lien which was created under the provision of the previous paragraph, and all other liens created on this immovable before the entry into force of this Act. If he fails to do this and it is evident from the document which is the basis for the entry that a lien has been established on the immovable, the court shall make the entry of this lien *ex officio*.
- (4) The entry of a non-possessory lien created before the register referred to in Article 177 of the law was established must be requested by the notary within three months of its establishment. In the request he must also state the prescribed uniform identification symbol for the movable. It shall be deemed that an entry made within this time limit takes effect from the day the non-possessory lien was created.

- (5) With the entry into force of this Act the provisions of chapter XXVIII (Articles 966 to 996) of the Obligations Act (Uradni list SFRJ, nos. 29/78, 39/85 and 57/89) shall cease to be applied.